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No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED EX PARTE AND SUPPORTING BRIEF

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED EX PARTE

Now comes the State of Louisiana through undersigned counsel and shows that Plaintiff's motion for entry of default and for leave to proceed ex parte should be denied for the reason that the Plaintiff by requesting and obtaining two separate continuances for the purpose of answering the Defendant's motion to dismiss herein filed on June 22, 1956, has waived its rights, if any it has, to secure a default judgment against the Defendant.

The State of Louisiana further opposes Plaintiff's motion to enter a default against the Defendant and to proceed ex parte for the reason that the Defendant has, within the period of time fixed by the Court for making its answer to the complaint, filed a motion to dismiss the complaint on the ground that this Court is without jurisdiction on the subject matter

of this suit, and is without jurisdiction over the Defendant personally.

The State of Louisiana shows that the motion to dismiss which it has filed herein is permitted by Rule 9 of this Court and Rule 12 of the Federal Rules of Civil Procedure to be filed and disposed of by the Court prior to the filing of an answer on the merits; that the said motion to dismiss on jurisdictional grounds was filed in good faith and not for any purpose of delay and presents serious questions concerning the authority of this Court to hear and determine this cause.

Defendant further shows that in the event that the said motion to dismiss on jurisdictional grounds should be over-ruled by the Court, the State of Louisiana desires to make a full and complete answer to the allegations of the complaint and to make affirmative defenses based upon treaties entered into by the United States, Acts of Congress, and historical facts in support of its claims to the properties described in the complaint; that this controversy involves lands and minerals of great value and raises important questions of law and fact which should not be decided in any ex parte procedure before this Court; and that if the Court should rule that Defendant's motion to dismiss is not in compliance with the orders of this Court, then the Defendant should be afforded an opportunity to file

a formal answer to the complaint on the merits within a reasonable time, following such a ruling by the Court.

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

JURISDICTION

The State of Louisiana denies that this Court has original jurisdiction of this controversy for the reasons set forth in its motion to dismiss on jurisdictional grounds.

STATEMENT

The statement contained in Plaintiff's brief outlines in chronological order the proceedings that have been had in this controversy up to the present time. However, there are certain statements made by Plaintiff's counsel to which Defendant takes exception.

Louisiana does not claim that it has received any grant from the United States Government under the terms of the Submerged Lands Act. It is Louisiana's contention that the Submerged Lands Act nullified the theory on which the opinions and decrees of this Court were based in the California, Texas and Louisiana

Tidelands Cases and merely recognized the title and right of possession which the coastal states have always had to the submerged lands seaward of their shores and coast lines.[1] In section 3 (b)(1) of the Submerged Lands Act "the United States releases and relinquishes unto said states . . . all right, title and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;"[2] such a disclaimer of title can hardly be considered as a grant or assignment of title by the United States.

Plaintiff calls attention to the fact that on June 20, 1956, the State of Louisiana filed a proceeding against the Humble Oil and Refining Company in the Civil District Court of the Parish of Orleans for an accounting for certain royalties. While this is irrelevant to the matter now presented to the Court, we may state that this was a suit brought by the State of Louisiana for an accounting under the terms of an oil and gas lease which it executed in favor of the Defendant. The Defendant sought to remove the case to the United States District Court for the Eastern Dis-

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[1]Superior Oil Co. v. Fontenot, 213 F.2d 565, Cert. Den. 348 US 837, 99 L.Ed. 660;
Legislative History of the Submerged Lands Acts; House Report #215 83d Cong., 1st Sess. pages 14, 15, 26, 33, 34, 43-47;
Senate Report #133, 83d Cong., 1st Sess. pages 5, 8, 54, 56-59, 64-68.

[2]Submerged Lands Act May 22, 1953 c. 65, Title II § 3, 67 Stat 30, 43 U.S.C. 1311.

trict of Louisiana on the ground that a Federal question is involved, but the Federal Court remanded the case to the State Court on the ground that the complaint presented no question of title to lands covered by the controversy now pending in this Court.

ARGUMENT

I

PLAINTIFF HAS WAIVED RIGHT TO OBJECT TO MOTION TO DISMISS.

As set forth in Plaintiff's preliminary statement, the State of Louisiana filed its motion to dismiss on jurisdictional grounds on June 22, 1956, which was within the period of time fixed by this Court for answering. Thereafter Plaintiff's counsel requested the Attorney General of Louisiana to agree on a delay of 30 days within which Plaintiff might answer this motion to dismiss. This delay was agreed to and on August 3, 1956 one of the Assistants to the Solicitor General addressed a letter to the Clerk of this Court advising him that the Government had obtained a delay until August 13, 1956 for making its response to Defendant's motion to dismiss and desired an additional delay until August 27, 1956 within which to make such response. The Clerk was advised that the Attorney General of Louisiana had consented to this continuance. Having thus sought and obtained delays within which to respond to the Defendant's motion, the Government has waived any right which it might have to object to the filing of the motion, and has no right to enter the default.

In *Ciccarello v. Schlitz Brewing Company*, 1 F.R.D. 491, 493, the United States District Court for the Southern District of West Virginia held that under

similar circumstances the Plaintiff would waive its right to object to the filing of this motion. In that case the Court said:

> " . . . if the motion were otherwise well founded, it could not be sustained in view of plaintiff's consent to the several continuances, and other proceedings without objection by plaintiff, which were had, constituting a waiver of any right to a default judgment. James' Sons & Co. v. Gott & Ball, 55 W. Va. 223, 57 S.E. 649; Pollard and Haw v. American Stone Co., 111 Va. 147, 68 S.E. 266. . . . It would not be in accord with the theory of default judgments, as stated in Keeler Bros. v. Yellowstone Valley National Bank, D.C., 235 F. 270, to permit plaintiff to take a default judgment by reason of any technical failure of defendants to plead when it is clear from the record that plaintiff has not been prejudiced by defendants not having pleaded and that it might work grave injustice to enter such judgment; nor would it be within the intent and spirit of the new rules to permit it."

II

MOTION TO DISMISS WAS PROPERLY FILED BY LOUISIANA BEFORE ANSWER ON THE MERITS.

Rule 9 paragraph 2 of this Court states that the Federal Rules of Civil Procedure may be taken as a guide to procedure in original actions in this Court, and paragraph 8 of the Rule 9 states that if the De-

fendant shall not *respond* by the return date, the Plaintiff shall be at liberty to proceed ex parte.

Rule 12 (a) of the Federal Rules of Civil Procedure requires a Defendant to serve his *answer* within 20 days after the service of the summons and complaint upon him, unless the Court directs otherwise. In the instant case, the Court directed the Defendant to answer on or before June 28, 1956 and the State of Louisiana responded by filing its motion to dismiss on jurisdictional grounds, on June 22, 1956, which was within the period of time prescribed by the Court for the Defendant's answer.

Although the Defendant is required by Rule 12 (a) to answer within the time directed by the Court, Rule 12 (b) permits the pleader to raise questions regarding lack of jurisdiction over the subject matter and lack of jurisdiction over the person by motion prior to answering on the merits. The service of this motion alters the period of time for answering and grants to the Defendant a delay following the ruling of the Court within which to file an answer (Rule 12 (a)). All of the text-writers agree that this Rule means what it says. Moore in his work on Federal Practice, Volume 2, page 2220 says:

> "Obviously a defendant would quite often prefer to raise certain objections which he believes will be sustained before resorting to the trouble of pleading and answer. This he may do. Under subdivision (b) (Rule 12) he may raise any or all of the following defenses which he may have by

motion; (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person . . . ".

Further commenting on Rule 12 Moore states in Volume 2, page 2235-6:

> "Both the original summons and the third-party summons state that the defendant must serve an answer within 20 days after service of the summons, and subdivision (a) contains much the same language. It is clear, however, that the defendant or third-party defendant is not obliged to comply literally with the summons. Rule 12 (a) provides that the service of a motion permitted under the rule alters the periods of time prescribed in Rule 12 (a). Defendant may, if he wishes, present every defense that he has in his answer. If this course is followed the answer must be served within the time discussed below. Obviously in many cases the defendant will desire to raise some defenses or objections prior to answer. As heretofore outlined he may do this pursuant to subdivision (b), (e) and (f), subject to subdivisions (g) and (h), which govern the consolidation of motions and waiver of defenses."

Barron & Holtzoff on their work on Federal Practice and Procedure, Volume 1, Page 595, state:

> "Service of a motion permitted by Rule 12 may enlarge the periods of time for serving the answer or other responsive pleading."

The same authorities say on Page 596 of Volume 1:

> "The grant of an extension of time to answer will also extend the time for filing and serving any preliminary motion."

The same authorities also state in Volume 1, Page 630:

> "Indeed, motion to dismiss for suggestion of want of jurisdiction is the appropriate method of attacking want of jurisdiction . . . . jurisdiction is to be determined from the allegations of the complaint, and has nothing to do with the merits."

The foregoing authorities are supported by numerous Court decisions including the following:

Universal Rim Company v. General Motors Corp., (CA6) 20 F. 2d 967, 31 F. 2d 969;
Blanton v. Pacific Mutual Life Insurance Co. (CA4) 4 F.R.D. 200, 146 F. 2d 725;
Faske v. Radbill (E.D.Pa.), 7 F.R.D. 234;
Orange Theatre Corp. v. Rayherstz Amusement Corp., (CA3), 139 F. 2d 871;
Auler v. Melrose, 102 F. Supp. 28;
National Distillers Products Corp. v. Hindeck, 10 F.R.D. 229.

In the case of *Universal Rim Company v. General Motors Corporation*, 20 F. 2d 966, 31 F. 2d 969, the parties had stipulated for an extension of time for the purpose of filing an answer and the Plaintiff took exception to the fact that the Defendant, instead of answering, filed a motion to dismiss. The Court of Ap-

peals for the Sixth Circuit passing upon the matter said:

> "There is no merit in the contention that the court should not have permitted the defendants to file a motion to dismiss, but should have required the filing of an answer. The term 'answer,' as used in the stipulation giving defendants additional time for filing answer, is to be construed, we think, to include a motion to dismiss. New Jersey v. New York, 31 US (6 Pet.) 323, 8 L. Ed. 414; Martin v. Baltimore & O. R. Co., 151 US 673, 14 S. Ct. 533, 38 L. Ed. 311."

The rules of this Court do not provide for any restriction of or limitation on the right of the Defendant to file a motion to dismiss and to have that motion passed on before an answer to the merits is filed. If this Court intended that all objections to the complaint and all questions as to jurisdiction should be raised either in opposition to Plaintiff's motion or leave to file the complaint, or in the answer to the merits, the Rules of this Court would have said so, but instead of making such a requirement, this Court states in its rules that the Federal Rules of Civil Procedure "may be taken as a guide to procedure in original actions in this Court." This Court has held that its order for the filing of an answer in any case is satisfied by the filing of a demurrer, or motion to dismiss. The case of the *State of New Jersey v. State of New York*, 6 Pet. 323, 31 US 323, 8 L. Ed. 414 is ample authority for this statement. The first opinion in this case is reported in 5 Pet. 284,

28 US 461, 8 L. Ed. 127, and at the end of that opinion Chief Justice Marshall issued the following order:

> " . . . the defendant having failed to appear, it is, on motion of the complainant, decreed and ordered that the complainant be at liberty to proceed ex parte; and it is further decreed and ordered that unless the defendant, being served with a copy of this decree sixty days before the ensuing August Term of this court, shall appear on the second day of the next January Term thereof and answer the bill of the complainant, this court will proceed to hear the cause on the part of the complainant, and to decree on the matter of the said bill."

After the Defendant had been served with the foregoing order, it appeared and filed a demurrer. The Plaintiff objected that the order of the Court required an answer and that the filing of the demurrer was not in compliance with the Order. The Chief Justice dismissed this objection in his opinion which is reported in 6 Pet. 323, 31 US 323, 8 L. Ed. 414, saying:

> "The demurrer, then, being admitted as containing an appearance by the State, the court is of opinion that it amounts to a compliance with the order of the last term. In that order the word 'answer' is not used in a technical sense, as an answer to the charges in the bill under oath; but an answer, in a more general sense, to the bill. A demurrer is an answer in law to the bill, though not in a technical sense, an answer according to the common language of practice."

In matters involving valuable properties and property rights, default judgments should be avoided and any doubt should be resolved against such procedure so that cases may be decided on their merits.

Tozer v. Charles A. Krause Mill Co., 189 F. 2d 242;

Henry v. Metropolitan Life Insurance Co., 3 F.R.D. 142.

III

NO DEFAULT SHOULD BE ENTERED

Rule 55 (a) of the Federal Rules of Civil Procedure provides for the entry of a default only where the Defendant has failed to plead or otherwise defend. The rule reads as follows:

> "(a) *Entry.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default."

It is apparent from the statement of the rule that an entry of default cannot be made so long as Defendant's motion to dismiss is pending.

Plaintiff's counsel suggests that the Defendant has had ample time to prepare its answer and infers that the only conclusion to be drawn from Defendant's failure to answer to the merits is an inference that the motion was filed for the purpose of delay. Government counsel states that this inference is "strongly supported by the insubstantiality of the grounds on

which the motion is made." In view of the authorities which have been cited in this brief, Defendant would be entitled to ignore these conclusions drawn by Plaintiff's counsel. However, we feel that the Court should be informed that the motion to dismiss was filed in good faith and not for any purpose of delay and is, we believe, based on very substantial grounds. It is difficult to believe that counsel have much faith in their conclusions on this subject. If the motion to dismiss is so unsubstantial, as suggested by Government counsel, it would not require 60 days for their response to the motion to dismiss.

The mere fact that this Court overruled a plea to the jurisdiction in *United States v. Louisiana*, 338 US 806, 94 L.Ed. 488 is no bar to the presentation of the motion to dismiss on jurisdictional grounds now. The present plea differs in a number of respects from that which was overruled by the Court in the original case, and additional reasons and additional authorities are cited in support thereof. The Court cannot read our original brief in support of the motion to dismiss and conclude that there are not substantial grounds for maintaining this motion. The mere fact that the Court has overruled a plea in one case is no reason why another plea on the same subject should not be entertained in another case. Although the Court does not frequently reverse itself, it has in recent years rendered a number of far-reaching decisions which have changed a jurisprudence that has been followed for

many decades of time. Those who have implicit faith in a principle of law certainly have a right to insist on that principle whenever occasion for it arises. Louisiana does not believe that this Court should exercise original jurisdiction in this case.

Plaintiff suggests that the State took occasion to oppose the Government's motion for leave to file the complaint in this case on several grounds but did not then assert jurisdictional grounds which it now urges. Answering this, we would call the Court's attention to Louisiana's opposition to the motion for leave to file the complaint. The very first paragraph of this opposition states that Louisiana does not waive "its right to object to the jurisdiction of this Court." It was our belief then and it is our opinion now that the motion to dismiss on jurisdictional grounds was properly filed after the Court had granted leave to file the complaint.

Government counsel states that "Louisiana appears to have no desire to develop the facts." This statement by plaintiff's counsel carries reverse English. Plaintiff has never desired to develop the facts in its controversy with Louisiana. The original tidelands case against Louisiana was decided on the pleadings alone, although Louisiana asked for a hearing to develop the facts. In the present proceeding the United States insisted in its brief in support of its motion for leave to file the complaint that the controversy "will not require the taking of any evidence." (Orig. Br.,

p. 15); and that "no helpful purpose would be served by having the case come before this Court on findings of fact made by a lower court." (Orig. Br., p. 17). Plaintiff accordingly suggests in its original brief that this Court determine certain questions of law, and that the questions of fact be made the subject of supplemental proceedings before a Special Master as in *United States v. California.* (Orig. Br., p. 17). The United States, therefore, seeks to go the long way around in a controversy which it now states should be decided without delay.

Again we call attention to our opposition to Plaintiff's motion for leave to file the complaint and brief in support thereof. In the brief in support of this opposition, Louisiana devoted some 30 pages to a statement of its claims to submerged lands in the Gulf of Mexico and urged that the taking of evidence was necessary and desirable not only to prove the width of the marginal belt claimed and owned by the State, but to demonstrate also the landward and seaward location of the lines which mark this belt. In the opposition and in the brief Louisiana urged that there were many questions of fact which could not be conveniently and fully presented in an original proceeding in this Court and that it would be a matter of great expense and inconvenience to the State to transport its witnesses and documentary evidence to Washington for a hearing of this cause. That opposition as well as the present motion have been filed and urged by the

State of Louisiana because we believe that a more complete development of facts can be made through a trial in a District Court and that the ends of justice can best be served thereby. It was for this reason that Louisiana filed its injunction suit in the Fourteenth Judicial District Court in the Parish of Calcasieu, referred to on Page 6 of the Plaintiff's brief. The State of Louisiana is most anxious to develop the facts and desires to proceed in a way whereby these facts can be fully developed.

CONCLUSION

For the foregoing reasons the motion for entry of default should be denied.

In any event the State of Louisiana, if it be required to answer on the merits, should be granted ample time within which to draft and print its answer and send it through the mails to the Clerk of this Court.

Respectfully submitted,

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August, 1956.

PROOF OF SERVICE

I, ..., one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ..... day of ....., 1956, I served copies of the foregoing Opposition to Plaintiff's Motion For Entry Of Default and For Leave to Proceed Ex Parte, And Supporting Brief, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

No. 10 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Application by Anderson-Prichard Oil Corporation, Lessee of Both Parties, For Extraordinary Relief and For Amendment or Interpretation of Decree

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Application to The Supreme Court of the United States For Extraordinary Relief and For Amendment or Interpretation of a Decree

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Now comes Anderson-Prichard Oil Corporation (hereinafter referred to as "Applicant") by its attorneys and respectfully represents:

1. Applicant is a corporation duly organized under the laws of the State of Delaware with its principal place of business in the City of Oklahoma City, Oklahoma and is engaged in the business of drilling for and producing oil and natural gas. Applicant is and has been unnecessarily, unduly and improperly prejudiced by an interpretation by the Secretary of the Interior of an order of this Court issued June 11, 1956, in this cause which said interpretation has caused Applicant to sustain substantial and irreparable

financial burdens accruing at the rate of $4,400 per day since the middle of July 1956 and jeopardizes the preservation of leasehold interests valued in the approximate sum of $4,500,000, all as will be set forth in more detail hereinafter.

2. By virtue of certain leases granted by the State of Louisiana and duly validated by the United States under the provisions of Section 6 of the Outer Continental Shelf Lands Act, Applicant is the lessee of certain areas amounting in full to about 8,875 acres, situated in the so-called disputed tidelands area off the coast of Louisiana. Said leases have been maintained and are now in force and effect as to both the State of Louisiana and the United States, as reflected by copies of said leases and subsequent actions with respect thereto, comprising Exhibits A and B, annexed hereto.

3. Notwithstanding the refusal of the United States to consent and approve Applicant's drilling on one of the leases upon which Applicant was prepared to drill as hereinafter set forth, the United States, when rentals due under such lease became payable, took the position that in order for Applicant to maintain such lease in force and effect without drilling, Applicant must pay the rentals which became due thereunder on July 17, 1956 and declined to comply with Applicant's request that rental payment be suspended during the period of time that the United States refused to consent and approve of drilling. In order to avoid any question with respect to maintaining said lease in force and effect as to the United States, Applicant paid the rentals which the United States maintained were necessary to keep said lease in force and effect.

4. The leases involved herein are all in the last year of their primary terms which, insofar as the State of Louisiana is concerned, will expire on December 27, 1956, and may be kept in force and effect after the expiration of the primary terms only by drilling on or production from the areas subject to said leases. In order to maintain said leases in force and effect by drilling, Applicant on or about April 13, 1956, entered into a contract with Deep Water Exploration Company under the terms of which Applicant agreed to provide the drilling contractor with a location upon which to commence drilling prior to July 15, 1956. By reason of the action of the United States hereinafter detailed Applicant has been unable to provide such drilling location and in consequence Applicant has been and is suffering the loss of standby charges provided in such contract at the rate of $4,400 per day, which charges will continue to accrue unless and until such drilling location is provided. In addition, as to the State of Louisiana and as hereinabove set forth, Applicant risks the loss of the aforesaid leases, which are valued in excess of $4,500,000 unless drilling operations are commenced on each lease on or before December 27, 1956.

5. Applicant represents that its aforesaid contractor is ready and willing to commence drilling and would commence drilling if the United States would grant permission therefor as it is required to do under the terms of its leases and applicable statutes and regulations. Application for such permission was made by Applicant to the Department of the Interior in proper form on June 12, 1956. Notwithstanding the obligation upon the United States to place its lessees in possession of the leased premises in so far as it may be within its power to do so, the United States has declined and refused to grant a permit for drilling and takes the position

financial burdens accruing at the rate of $4,400 per day since the middle of July 1956 and jeopardizes the preservation of leasehold interests valued in the approximate sum of $4,500,000, all as will be set forth in more detail hereinafter.

2. By virtue of certain leases granted by the State of Louisiana and duly validated by the United States under the provisions of Section 6 of the Outer Continental Shelf Lands Act, Applicant is the lessee of certain areas amounting in full to about 8,875 acres, situated in the so-called disputed tidelands area off the coast of Louisiana. Said leases have been maintained and are now in force and effect as to both the State of Louisiana and the United States, as reflected by copies of said leases and subsequent actions with respect thereto, comprising Exhibits A and B, annexed hereto.

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5. Applicant represents that its aforesaid contractor is ready and willing to commence drilling and would commence drilling if the United States would grant permission therefor as it is required to do under the terms of its leases and applicable statutes and regulations. Application for such permission was made by Applicant to the Department of the Interior in proper form on June 12, 1956. Notwithstanding the obligation upon the United States to place its lessees in possession of the leased premises in so far as it may be within its power to do so, the United States has declined and refused to grant a permit for drilling and takes the position

through the Secretary of the Interior that it is forbidden to do so by virtue of the terms of the decree of this Court entered on June 11, 1956, which provided, among other things:

> "It is further ordered that the State of Louisiana and the United States are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this Court unless by agreement of the parties filed here."

6. In the disputed tidelands area the majority of leases are held by operators under a lease either from the United States or from the State of Louisiana, but not from both. Applicant believes and therefore avers that the decree of this Court is obviously designed to maintain a *status quo* between the leasing operations of the United States on the one hand and the State of Louisiana on the other hand in the disputed area pending determination of title thereto. Applicant believes that no explanation could have been made to the Court by the parties respecting the rights of persons such as Applicant which holds leases from both the disputing parties, and pays dual rents and, therefore, enjoys valid leaseholds regardless of which government may ultimately be found to be the owner of such premises. Nor could the decree of this Court have been designed to prevent persons situated as Applicant from engaging in drilling operations pursuant to leases granted by both disputing parties, since their drilling rights do not depend upon the outcome of this litigation. Nevertheless, by reason of the interpretation placed by the United States upon the decree of this Court Applicant is being denied permission to drill and is suffering grievous and irreparable damage in the form of penalties under the aforesaid contract and the possible

loss of the aforesaid leases and will continue to do so unless relief is granted.

7. Notwithstanding Applicant's belief that the Court's decree was not intended to affect Applicant in respect of dual leased premises, Applicant, to exhaust every possibility of administrative relief, has made every effort to obtain an agreement on the part of the United States and the State of Louisiana for the commencement of drilling operations by Applicant. The State of Louisiana has recognized its obligation to do what it can to place Applicant in possession of the leased premises and has consented to the commencement of drilling operations by Applicant by entering into an agreement with Applicant as evidenced by Exhibit B attached hereto. The agreement, represented by Exhibit B, was submitted to the Secretary of the Interior for execution pursuant to the authority conferred on him by Section 7 of the Outer Continental Shelf Lands Act, but on August 13, 1956, he finally refused to do so.

8. Applicant consulted with representatives of the Attorney General and was informed, among other things, that the Attorney General's position was basically the same as that of the Secretary of the Interior; that under no circumstances would the Attorney General consider anything other than an overall agreement; that the Attorney General was entitled to exercise independent judgment and in the exercise thereof would maintain his aforesaid position regardless of what the Secretary of the Interiors' position might become.

9. At no time has the Secretary of Interior or the Attorney General, or their representatives, raised any ques-

tions as to the form of the agreement set forth in Exhibit B. Applicant has been informed, however, by representatives of the Attorney General that although it was unnecessary to consider the form of the agreement in view of his position that no consideration would be given to anything other than an overall agreement, their failure to raise any objections as to the form of the agreement was not to be construed as approval thereof. It was suggested that the Attorney General might have some objections but at no time has Applicant been informed what such objections might be, if any.

10. While the Secretary of the Interior and the Attorney General have declined to grant a hearing to Applicant, Applicant believes that their position is as stated by their representatives, namely, that they will not sign such agreement because: (a) they do not desire a "piece-meal" settlement; and (b) they believe by signing such agreement they would discriminate in favor of Applicant over other oil companies.

11. Neither of such grounds has any force or validity. According to Applicant's information, the United States and the State of Louisiana have been endeavoring to negotiate an overall agreement within the terms of the Court's decree for a period in excess of three months; however, no agreement has been reached. Furthermore, the Applicant is informed and believes and therefore avers that the negotiations have included questions of validation by the State on the one hand of United States leases and by the United States on the other hand of State leases and leasing in the disputed area and do not affect situations such as that enjoyed by Applicant wherein the operator needs no validation of his leases because it holds leases from both disputing

parties. In any event, Applicant ought not to be required to suffer the leases attendant upon protracted negotiations, merely to satisfy the desire of the Secretary of the Interior and the Attorney General for an over-all settlement. As for the alleged discrimination, Applicant submits that it enjoys a distinct and separate situation in view of its dual lease position which warrants and demands that a distinction be made between Applicant and persons holding leases which must be validated by the successful party in this cause if such leases are to be maintained in force and effect.

12. By reason of the foregoing, Applicant believes and therefore represents that although the decree of this Court was not designed to prevent drilling operations by operators such as Applicant holding a dual lease position, nevertheless, Applicant is being prevented by the United States from drilling and will continue so unless relief is granted. Even if the parties ultimately reach an over-all agreement, the time element is such as to deny applicant relief as a practical matter.

13. Applicant has heretofore requested individual Justices of this Honorable Court for relief in the premises, having applied to Mr. Justice Black for relief on August 16, 1956 for a stay or interpretation of the aforesaid decree. The relief requested was denied by Justice Black. Thereafter, the application was submitted to Mr. Justice Frankfurter, who also declined to grant relief.

14. In a further effort to obtain relief Applicant brought an action in the United States District Court for the District of Columbia against the Secretary of Interior and the Attorney General, seeking a mandatory injunction to compel

the issuance of a drilling permit and alternatively, requiring such defendants to consider the agreement with the State of Louisiana (Exhibit B herein), or to state the terms and conditions upon which an agreement would be entered into with the State of Louisiana and Applicant so that Applicant might commence drilling. The motion for preliminary injunction was heard by the United States District Court for the District of Columbia on August 29, 1956 and denied. Thereupon Applicant immediately appealed to the Court of Appeals for the District of Columbia and on September 4, 1956 that Court affirmed the decision of the lower court, Judge Wilbur K. Miller dissenting.

15. Applicant has therefore exhausted all remedies which are available to it for relief and can only look to this Honorable Court to be relieved of the burden which Applicant has been unnecessarily, unduly and improperly required to assume.

16. Applicant may obtain relief from this Court if the Court, considering the equities of this case, will do any of the following:

A. Amend the decree issued herein on June 11, 1956 so that it will clearly disclose it does not apply and was not intended to apply to lessees holding a lease or leases granted by and maintained in force and effect as to both sovereigns and relating to the disputed tidelands area, or

B. Enter an order of interpretation to the effect that the filing of the leases and the documents disclosing subsequent action with respect thereto as reflected in Exhibit A, and the filing of Exhibit B represent in combination the

consent of the United States and the State of Louisiana for the commencement of drilling operations and constitute an agreement for drilling as provided for in the aforesaid decree of June 11, 1956, or

C. Order the United States to appear forthwith and show cause, if any they have, why they should not agree that Applicant be permitted to commence drilling pursuant to the aforesaid leases.

17. Granting relief in any of the forms requested will in no manner prejudice the legal rights of the parties to this cause. It will merely deny the United States an excuse for withholding what it has contracted to give Applicant and for which it has accepted and received substantial payments, specifically, possession of the leased premises and consent and approval for drilling.

WHEREFORE, Applicant respectfully prays:

1. That an order be issued herein amending the aforesaid decree of this Court of June 11, 1956, insofar as it may affect drilling operations by Applicant upon the aforesaid leased premises, and specifically permitting applicant, as the holder of leases from each of the contesting parties, to commence drilling on said leases; or in the alternative,

2. That a determination be made and an order of interpretation entered that the validation by the United States of the leases described in Exhibit A, said validation being also disclosed by Exhibit A, and the consent given by the State of Louisiana as evidenced by Exhibit B represent in combination the consent of the parties for commencement

of drilling operations for which provision was made in the Court's decree; or in the alternative

3. That an order be issued requiring the United States to appear forthwith and show cause, if any they have, why they should not agree that Applicant be permitted to commence drilling operations pursuant to the aforesaid leases.

4. Such other and further relief as may be appropriate.

5. That an oral hearing be granted Applicant in support of this application.

Respectfully submitted,

JOSEPH V. FERGUSON II
Joseph V. Ferguson II
902 Whitney Bldg.
New Orleans, Louisiana

Of Counsel:
C. T. McClure
Liberty Bank Bldg.
Oklahoma City, Okla.

STATE OF LOUISIANA
PARISH OF ORLEANS

Joseph V. Ferguson II, being first duly sworn according to law, on oath deposes and says that he has read the fore-

going application subscribed by him and verily believes the facts stated therein to be true.

JOSEPH V. FERGUSON II
Joseph V. Ferguson II

Subscribed and sworn to before me this 22nd day of September, 1956.

HERMAN M. BAZINSKY
Notary Public

(SEAL)

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

PROOF OF SERVICE

I, Joseph V. Ferguson II, one of the attorneys for Anderson-Prichard Oil Corporation, applicant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of September, 1956, I served copies of the attached Application for Extraordinary Relief and for Amendment or Interpretation of a Decree on the several parties in the above-entitled cause, as follows:

1. On the United States: (a) by mailing a copy thereof to the office of the Solicitor General, Department of Justice, Washington 25, D. C.; and (b) by telegraphic notice to the Solicitor General that the application was being filed on the aforesaid date.

2. On the State of Louisiana: (a) by mailing a copy thereof addressed to the office of Bailey Walsh, Esq., special counsel to the State of Louisiana, 1025 Connecticut Avenue, N.W., Washington, D. C.; and (b) by telegraphic notice to said Bailey Walsh, Esq. that the application was being filed on the aforesaid date.

JOSEPH V. FERGUSON II
Joseph V. Ferguson II
Attorney for Anderson-
Prichard Oil Corporation
Whitney Bank Building
New Orleans 12, Louisiana

FILED
SEP 28 19
JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Brief in Support of Application by Anderson - Prichard Oil Corporation, Lessee of Both Parties, For Extraordinary Relief and For Amendment or Interpretation of Decree

JOSEPH V. FERGUSON II
902 Whitney Building
New Orleans, Louisiana
Attorney for Applicant

Of Counsel:
C. T. McCLURE
Liberty Bank Bldg.
Oklahoma City, Oklahoma

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

MEMORANDUM BRIEF IN SUPPORT OF APPLICATION FOR EXTRAORDINARY RELIEF AND AMENDMENT OR INTERPRETATION OF DECREE

MAY IT PLEASE THE COURT:

This application is filed by reason of the effects upon Applicant of the Court's interlocutory decree entered in this cause on June 11, 1956 which are set out in some detail in the application. As grounds for the application we submit: (a) the Court's decree was not designed to affect Applicant, particularly since Applicant had no opportunity to be heard prior to its issuance, and neither of the contesting parties brought the dual lease situation to the Court's attention, (b) nevertheless, Applicant is suffering continuous and irreparable damage as a result thereof, and (c) it lies within the power of the Court in such circumstances to promptly grant the relief sought by Applicant.

STATEMENT OF THE CASE

The background of this application is substantially as follows. The controversy between the United States of America and the State of Louisiana relates to the ownership of said certain submerged lands situated off the coast of Louisiana. During pendency of this proceeding the United States offered for lease various tracts of land situated in the disputed tidelands area and in attempt to halt the said proposed leasing by the United States the State of Louisiana brought an action in its own courts enjoining such leasing and prohibiting operations on the area in dispute in instances where leases were held from the United States only, unless such operations were consented to by the State of Louisiana. Thereafter, the United States of America appeared in this proceeding and moved for an injunction to restrain the State of Louisiana from proceeding with the action in its State Court. In response to the motion of the United States this Honorable Court entered a decree on June 11, 1956 restraining the State from proceeding with its action and further enjoined the parties to the action from leasing or beginning the drilling of new wells in the disputed tidelands area pending orders of this Court unless by agreement of the parties filed with the Court.

In view of the fact that Applicant at the time the injunction was issued by the State Court was a lessee in good standing insofar as the State of Louisiana was concerned, Applicant was of the opinion that it had the consent of the State of Louisiana to commence operations on leases issued by the State embracing areas which are the subject of the dispute between the State of Louisiana and the United States here. As set forth in detail in the application and ex-

hibits attached Applicant's State leases have been validated by the United States under the provisions of the Outer Continental Shelf Lands Act (43 U.S.C.A. 1331 et seq.) and therefore Applicant is also a lessee of the United States.

It follows that since Applicant's operations under such leases were not the subject matter of the State Court proceedings, the motion of the United States which resulted in this Court's decree of June 11, 1956, was not directed at such leases. Applicant is not a party to this litigation, was not apprised of the fact that its leasehold rights were in jeopardy and hence, made no attempt to appear in this proceeding prior to the entry of said decree. We conclude, therefore, that this Court's decree was not intended to affect operations by Applicant under these leases. Nevertheless, Applicant has been effectively restrained thereby.

Both the State of Louisiana and the United States require that operators seeking to commence the drilling of wells on lands owned by or situated within their respective jurisdictions obtain permits and/or approval before drilling and as a result of their interpretation of the Court's order of June 11, 1956, declined to grant Applicant permits or approval for the beginning of any new wells in the disputed tidelands area. Applicant believes it was not intended to be bound by the provisions of the said order because of its dual lease position. However, it was nonetheless prevented from exercising the rights granted to it by its respective lessors by virtue of their refusal to issue the necessary drilling permits or grant the requisite approval on the grounds that issuance was prohibited by the order of June 11, 1956.

In the disputed tidelands area many leases were originally granted by the State of Louisiana, subsequently validated by the United States and thereafter were maintained in force and effect with respect to the United States alone; other leases were originally granted by the United States and there were no corresponding leases obtained from the State of Louisiana; Applicant's leases, however, were originally granted by the State, subsequently validated by the United States and thereafter maintained in effect with respect to both governments. In view of the fact that Applicant held a lease from both contestants, no difficulty in drilling and development was anticipated. In order to develop the leases, Applicant entered into a drilling contract with Deep Water Exploration Co. on April 13, 1956, which said contract requires Applicant to furnish a drill site on or before July 15, 1956 and provides for penalties in the sum of $4,400.00 per day. Deep Water Exploration Co. is and has been on the site of the intended drilling location since mid-July; however, Applicant has been unable to obtain the necessary permit or approval and has incurred and will continue to incur the penalties provided for in said contract, unless relief is granted.

After the entry of the court's decree two proposed stipulations were presented by representatives of various oil companies to the State of Louisiana and the United States of America, one covering the situation wherein leases were in force and effect insofar as the United States was concerned and one covering the dual lease situation. At the time these stipulations were presented in the middle of June, 1956, Applicant's representative was informed by the Department of the Interior that an overall agreement was desired by the Secretary but that, in the event such agreement could not

be effected within a reasonable time, consideration would be given to entering into a stipulation covering the dual lease position alone. Thereafter, a conference was held between representatives of the State of Louisiana and representatives of the United States in the beginning of July.

No agreement, however, was reached in that conference. When Applicant learned that no agreement had been reached between the State and the United States and that additional negotiations, possibly of protracted duration, would be required, Applicant determined that in order to protect its leasehold rights and mitigate the penalties about to accrue, under the provisions of its contract, with Deep Water Exploration Co., some independent action would be required. With this in mind Applicant requested the State of Louisiana to execute an agreement which would permit Applicant, insofar as the State was concerned, to drill. The State recognized its obligation to place Applicant in possession of the leased premises, and executed such agreement as is reflected by Exhibit B. Thereafter, Applicant contacted representatives of the Secretary of the Interior and informed them of the fact that an agreement had been executed by the State of Louisiana and requested an appointment for the purpose of submitting the agreement to the United States. Applicant was then informed that a meeting had been scheduled between the State and the United States on August 2, 1956 and it was suggested that such meeting might result in an overall agreement which would not require execution by the United States of the agreement reflected by Exhibit B. The meeting held between the State of Louisiana and the United States on August 2nd and 3rd resulted in an adjournment of the meeting without an agreement being concluded. On August 6, 1956, Applicant submitted the

agreement reflected by Exhibit B to representatives of the Department of Interior and, as set forth in the application, on August 13, 1956 was informed that the Secretary of the Interior would not execute the agreement.

Representatives of the Attorney General informed Applicant that the Attorney General's position was basically the same as that of the Secretary of the Interior and that the Attorney General was entitled to exercise independent judgment with respect to the agreement sought by Applicant and in the exercise thereof, declined to execute the agreement.

Applicant then sought relief from two of the Justices of this Court, requesting a stay or interpretation of the decree with respect to leases which had been maintained in force and effect as to both sovereigns; however, this relief was denied.

Thereafter, Applicant attempted to obtain a mandatory injunction from the United States District Court for the District of Columbia, seeking to compel the Secretary of Interior and the Attorney General to approve and consent to drilling on said leases or to state upon what grounds such consent and approval would be given to lessees holding a dual lease position. This relief was denied by the District Court and on appeal, the Circuit Court of Appeals affirmed the judgment of the District Court, Judge Wilbur K. Miller dissenting. (Anderson-Prichard Oil Corporation v. Fred A. Seaton, Secretary of the Interior and Herbert Brownell, Jr., Attorney General of the United States, No. 13,526, Court of Appeals, District of Columbia).

The views of Judge Miller expressing his reasons for dissent may be of interest to the Court and are hereinbelow set forth in part, as follows:

> "The parties agreed on oral argument that Anderson - Prichard's unique position as a dual lessee, whose right to the lease does not depend on the outcome of the litigation between its two lessors, was not drawn to the Supreme Court's attention at the hearing which was followed by the injunctive order. I think it reasonable to conclude that the Court was dealing with a situation in which, unless enjoined, either government might execute new leases or might authorize or permit its own existing lessees, each dependent for title on the title of its lessor, to begin drilling. Obviously unnecessary confusion and complications would result from the commencement and completion of wells by contending lessees, so the Court prohibited such drilling pending its decision as to title, unless it were done by agreement between the State and the United States.
>
> "I think we are free to construe the Supreme Court's decree in the light of the situation with which it dealt, and I see no reason to suppose the Court intended to cover a factual situation which was not presented to it. Since this dual lessee's title to a valid lease and its right to drill thereunder do not depend, as I have pointed out, on the ultimate decision in the Original Action as to which of its lessors have title, I cannot believe the injunctive decree was intended to prohibit it from

drilling pending that decision. If the Supreme Court did not so intend, then its decree does not have that effect.

"But, if the Supreme Court's second paragraph should be construed as prohibiting drilling by this dual lessee 'unless by agreement of the parties (Louisiana and the United States) filed here,' I suggest that those parties have in legal effect already agreed. Both governments agreed that Anderson-Prichard might drill on the area involved when they executed leases to it. An oil lease is fundamental authority to drill. The federal drilling permit is concededly a mere formality, as I have said. So I think the parties have basically consented that this dual lessee may commence a well. The words 'filed here' in the order do not trouble me, for the appellant's two leases may be quickly tendered for filing in the Original Action if they are not already there.

"Either because, as I think, the Supreme Court did not enjoin drilling by a dual lessee such as this appellant, or, if I am wrong in that, because the lessors have consented to such drilling within the meaning of the injunctive order, I would reverse and direct the District Court to order the defendant officials to perform their admittedly ministerial duty of issuing a drilling permit."

For the convenience of the Court, the report of this case is reproduced in its entirety as Appendix A.

It thus appears that applicant has exhausted all possible means of administrative relief before turning to this Court to request the relief sought in the application.

Neither the United States nor the State of Louisiana can in any manner be prejudiced by the Court granting Applicant the relief sought, and as evidence thereof, the State of Louisiana has executed an agreement indicating its consent (Exhibit B). It may be reasonably concluded that this agreement would not have been signed by the State of Louisiana if it felt that its rights would be in any manner prejudiced by doing what it could to permit Applicant to drill.

No representatives of the United States have at any time indicated that the United States will be prejudiced in any manner by becoming a party to the agreement reflected by Exhibit B, the only reason given being that the United States preferred an overall settlement and that it might be a discrimination against other lessees of the United States. It follows that if these be the only objections (and Applicant's above statement is supported by weeks of negotiations and conferences as well as the stated position of the United States in the action against the Secretary of Interior and the Attorney General) to the agreement and taking into consideration the admission by the United States in the Court of Appeals that dual lease situation was not brought to the attention of the Court, there can be no sound reason for the United States objecting to the Court granting, in any of the suggested forms, the relief sought by Applicant.

AUTHORITY OF THE COURT TO GRANT THE RELIEF SOUGHT

There can be no question of the right of this Court to amend, modify or interpret decrees relating to injunctive or interlocutory relief as between the parties or upon the application of one affected thereby, though not a party to the action. *Regal Knitwear Co.* v. *National Labor Relations Board*, 324, U. S. 9, 89 Law Ed. 661; *State of New Jersey* v. *City of New York*, 296 U. S. 259, 80 Law Ed. 214.

In the case of *Regal Knitwear Co.* v. *National Labor Relations Board*, we find the Court saying:

> "If defendants enter upon transactions which raise doubts as to the applicability of the injunction, they may petition the court granting it for a modification or construction of the order. Cf. New Jersey v. New York, 296, U. S. 259, 80 L ed 214, 56 S Ct 188. While such relief would be in the sound discretion of the court, we think courts would not be apt to withhold a clarification in the light of a concrete situation that left parties or 'successors and assigns' in the dark as to their duty toward the court."

It is equally clear, that in situations such as the one presented by Applicant, there being no specific provision in Rule 9 covering this situation and that rule being subject to a broad interpretation, the Court is free to mold its procedure and process to fit the specific case, and if it sees fit to grant the relief sought to grant it promptly in any form

which will afford Applicant relief. As was said in the case of *Ex parte Kentucky* v. *Dennison*, 65 U. S. 726:

> "The cases referred to leave no question open to controversy, as to the jurisdiction of the Court. They show that it has been the established doctrine upon this subject ever since the Act of 1789, that in all cases where original jurisdiction is given by the Constitution, this court has authority to exercise it without any further Act of Congress to regulate its process or confer jurisdiction; *and that the court may regulate and mold the process it uses in such manner as in its judgment will best promote the purposes of justice.*" (Emphasis supplied.)

CONCLUSION

We submit, therefore, that there is ample authority for the Court to grant relief on any of the grounds sought and that if the Court should conclude that relief should be granted, then it is clearly within the power and authority of the Court to provide a prompt process and procedure for granting such relief. Considering both the legal and equitable rights of Applicant with respect to each of the parties to this litigation, it is submitted that the relief sought by Applicant should be granted. It may be that the relief of the nature sought by Applicant is without precedent in Original Actions; however, and as may be clearly seen from the foregoing, Applicant finds itself in a position without precedent, that is, a non-litigating party whose rights have become involved in a dispute between a State and the United States. It may be said that the relief sought by Applicant is un-

usual; however, as the Court well knows, extraordinary cases call for extraordinary remedies and relief.

Respectfully submitted,

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Attorney for Applicant
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New Orleans, Louisiana

Of counsel:
C. T. McCLURE
Liberty Bank Bldg.
Oklahoma City, Oklahoma

PROOF OF SERVICE

I hereby certify copies of the above and foregoing brief have been served upon the parties hereto as follows:

A. On the United States by this day mailing a copy thereof to the office of the Solicitor General, Department of Justice, Washington 25, D. C.

B. On the State of Louisiana by this day mailing a copy thereof addressed to the Office of Bailey Walsh, Esq., special counsel to the State of Louisiana, 1025 Connecticut Avenue, N.W., Washington, D. C.

Joseph V. Ferguson II

September 26, 1956.

APPENDIX A

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 13,526 April Term, 1956

Anderson-Prichard Oil Corporation,
a corporation,
Appellant,

v.

Fred A. Seaton, Secretary of the Interior

Herbert Brownell, Jr., Attorney General
of the United States,
Appellees.

Before: Edgerton, Chief Judge,
Wilbur K. Miller and Bazelon,
Circuit Judges.

ORDER

This case came on for consideration on appellant's motion for an immediate hearing on its appeal from an order denying the preliminary injunction and for a decree setting aside said order and remanding the case to the District Court with directions to issue the injunction as prayed for in the complaint, and said motion was argued by counsel.

II.

Upon consideration whereof, it is ORDERED by the Court that the aforesaid appellant's motion be, and it is hereby, denied. *United States* v. *Louisiana*, 351 U. S. 978.

Per Curiam.

Dated: September 4, 1956.

Dissenting opinion by Circuit Judge Miller attached.

No. 13,526, *Anderson-Prichard Oil Corp.* v. *Seaton, et al.*

WILBUR K. MILLER, Circuit Judge dissenting: Louisiana claims title to the submerged lands off her coast between the three-mile and three-league limits, and has executed oil leases to a number of lessees covering various portions of the area. The United States also claims ownership and has also executed many oil leases to other lessees. Out of more than 150 leased areas, there are only two or three on which a single lessee holds leases from both Louisiana and the United States. The appellant is one of these very few, and is said to be the only one of them who has kept both leases alive by paying delay rentals to both lessors.

The United States filed an Original Action in the Supreme Court against Louisiana to quiet its title to the entire submerged area. The State filed suit in its own court to enjoin the federal lessees from drilling. In the Original Action, the Government sought an injunction against the prosecution of the state court suit or any similar action, pending the Supreme Court's disposition of the basic title question. This

relief was granted by the Court (351 U. S. 978), which added this paragraph to its order:

> "IT IS FURTHER ORDERED that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this Court unless by agreement of the parties filed here."

In the spring of 1956 Anderson-Prichard contracted with a marine drilling company to commence a well in the area on which it held subsisting leases from both governments. The State and the United States were then in dispute over ownership, but the appellant felt secure. Since it held leases from both contenders, apparently it had a valid lease no matter how the question of title to the submerged lands might finally be determined. To be sure, a federal drilling permit had to be obtained, but no trouble on that score was anticipated as the issuance of a permit to a lessee is, the Government admits a formality which occurs practically automatically.

Solely because of the second paragraph of the Supreme Court's order in the Original Action quoted above, the Secretary of the Interior and the Attorney General of the United States refuse to issue a drilling permit to Anderson-Prichard. Their counsel conceded on oral argument that, but for what they regard as the Supreme Court's prohibition against doing so, a drilling permit would be promptly issued; they said its issuance is a mere ministerial act.

IV.

In the meantime, the drilling contractor had moved or was about to move on location. I am not sure which, as I necessarily write hurriedly; but it is certain that the contractor is in a position where Anderson-Prichard is obliged to pay him standby charges in the sum of $4,400.00 per day. Moreover, the appellant's lease from Louisiana will expire by its terms December 27, 1956, if a well is not commenced by that time; in that event, Anderson-Prichard will lose its present favorable position as a "dual lessee," and will have no lease if title should be won by the State.

In these circumstances the dual lessee asked an associate justice of the Supreme Court (the Court being in recess) to modify or clarify the second paragraph of the Court's order. This was denied without opinion, but probably because the justice did not feel justified in modifying an order entered by the whole Court. A similar motion was presented to a second justice, who declined to disturb the action of his senior.

Anderson-Prichard then filed the present suit in the United States District Court for the District of Columbia, asking that the defendant officials be required to issue a drilling permit. That court thought itself bound by the Supreme Court's second paragraph and denied a motion for preliminary injunctive relief. Its order is here for review. My brothers think, as did the district judge, that the second paragraph governs the question here, and so affirm his holding. I dissent.

The parties agreed on oral argument that Anderson-Prichard's unique position as a dual lessee, whose right to the lease does not depend on the outcome of the litigation

between its two lessors, was not drawn to the Supreme Court's attention at the hearing which was followed by the injunctive order. I think it reasonable to conclude that the Court was dealing with a situation in which, unless enjoined, either government might execute new leases or might authorize or permit its own existing lessees, each dependent for title on the title of its lessor, to begin drilling. Obviously unnecessary confusion and complications would result from the commencement and completion of wells by contending lessees, so the Court prohibited such drilling pending its decision as to title, unless it were done by agreement between the State and the United States.

I think we are free to construe the Supreme Court's decree in the light of the situation with which it dealt, and I see no reason to suppose the Court intended to cover a factual situation which was not presented to it. Since this dual lessee's title to a valid lease and its right to drill thereunder do not depend, as I have pointed out, on the ultimate decision in the Original Action as to which of its lessors have title, I cannot believe the injunctive decree was intended to prohibit it from drilling pending that decision. If the Supreme Court did not so intend, then its decree does not have that effect.

But, if the Supreme Court's second paragraph should be construed as prohibiting drilling by this dual lessee "unless by agreement of the parties (Louisiana and the United States) filed here," I suggest that those parties have in legal effect already agreed. Both governments agreed that Anderson-Prichard might drill on the area involved when they executed leases to it. An oil lease is fundamental authority to drill. The federal drilling permit is concededly

a mere formality, as I have said. So I think the parties have basically consented that this dual lessee may commence a well. The words "filed here" in the order do not trouble me, for the appellant's two leases may be quickly tendered for filing in the Original Action if they are not already there.

Either because, as I think, the Supreme Court did not enjoin drilling by a dual lessee such as this appellant, or, if I am wrong in that, because the lessors have consented to such drilling within the meaning of the injunctive order, I would reverse and direct the District Court to order the defendant officials to perform their admittedly ministerial duty of issuing a drilling permit. The order could require that the maximum royalty accruing from oil produced be deposited in the registry of the District Court pending the Supreme Court's decision as to which lessor is entitled to collect it. This would adequately safeguard the only possible interest that Louisiana and the United States have in the matter, and I do not see why either should object to such a provision in the order. Upon objection, however, I think it should be omitted, in which event the lessee would be required to pay royalties under both leases with the hope of ultimately recovering from the payee which loses the title contest in the Supreme Court. The lessee might prefer to make burdensome double royalty payments in order to avoid losing a lease said to be worth $4,500,000. The relief I suggest is not that expressly prayed for in the complaint, but I think it is within the prayer for general relief.

One more thing. The appellees say this is a suit against the United States to which it has not consented. This argument is not the "last refuge" of a Government lawyer; it is

usually his first. But in my view it is not valid here. We are considering a lessee's right to drill under a lease which the United States has already granted. The defendant officials simply refuse to implement that lease by performing a confessedly ministerial act. And they refuse only on the basis of what I think is the mistaken notion that the Supreme Court has told them not to perform it.